

REMARKS

The present Amendment is in response to the Office Action dated February 6, 2003 in reference to the above-identified patent application. The Examiner set a shortened statutory period for reply of three (3) months, making the present Amendment due by May 6, 2003.

At the outset, the Examiner will please note that the present Amendment is submitted according to the Revised Format pursuant to 37 CFR 1.121.

Before turning to the substantive rejections of the claims, the Examiner has stated that the disclosure on page 1, line 4 and page 3, line 20 has been objected to because the status of the application needs to be updated. Applicant has amended these paragraphs as indicated above for the Examiner's consideration.

In the Office Action, claims 1-30 are pending and claims 31-37 are withdrawn from consideration as being drawn to a nonelected method, pursuant to 37 CFR § 1.142 (b), without traverse. With respect to the examined claims, Applicant notes with appreciation the allowance of claims 12-23 as well as the allowability of claims 3 and 25, if rewritten into independent form. As a result of the Examiner's indication in this regard, Applicant has added a new independent claim 38, which is essentially original claim 3 rewritten into independent form, including all of the limitations of the base claim and intervening claim 2.

Turning now to the substantive rejections of the claims, the Examiner has rejected claims 1, 2, 4-11, 24 and 26-30 over various cited references. Specifically, the Examiner has rejected claims 1, 4, 5, 10 and 11 under 35 U.S.C. § 102(b) as being

anticipated by U.S. Patent No. 1,683,545 to Harris. Claims 1, 4, 5 and 10 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,784,102 to Stults. The Examiner has also rejected claims 1, 2, 4, 5, 10, 24, 26, and 30 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,735,460 to Eisenbraun.

Additionally, the Examiner has rejected claims 6-9 under 35 U.S.C. § 103(a) as being unpatentable over Harris, Stults, and Eisenbraun, individually. The Examiner has also rejected claims 27-29 under 35 U.S.C. § 103(a) as being unpatentable over Eisenbraun. Also, claims 2, 24 and 26-30 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Stults in view of Eisenbraun.

To address the Examiner's substantive rejections of independent claim 1, Applicant has amended the claim to further recite that the piece of porous material includes both a top surface and a bottom surface where at least a portion of each surface is exposed to the ambient air and that the porous material is "affixed" to the setting. Applicant submits that Harris, Stults, and Eisenbraun do not teach the combination of these additional elements. With respect to the Harris reference, porous material 12 is held within a holder that has a back wall 10 and a front wall 11. (Col. 1, lines 46-48). Harris teaches that front wall has openings formed therein to allow for "the escape of perfume from the pad 12, and to provide means whereby perfume may be introduced into the container." (Col. 2, lines 61-65). Figure 3, which is a cross-sectional view of the jewelry item taught in Harris, illustrates that back wall 10 is a solid piece. Accordingly, the bottom surface of the porous material 12 taught in Harris cannot be exposed to the ambient air.

While Stults teaches that a portion of the upper and lower surfaces of porous material 50 may be exposed to the ambient air through perforated areas 56, the reference does not teach that porous material 50 is "affixed" to the setting. Rather, "body 50 may be turned within the housing 12 so as to be indexed so that a fresh portion of this body 50 will be exposed so that vaporization can occur." (Col. 4, lines 65-68). Accordingly, body 50 cannot be "affixed" to the setting if it is to perform this indexing function.

Finally, Eisenbraun does not teach that porous material 30 has both a top and bottom surface that are at least partially exposed to the ambient air. Rather, as described beginning at line 1 of Column 3, porous material 30 is contained in insert 28, which is positioned within interior cavity 14 of housing 12. Corresponding Figure 3 shows that insert 28 is a solid piece that abuts the sides and bottom surface of porous material 30 such that the neither the sides or bottom surface are exposed to the ambient air.

Based on the foregoing reasoning, Applicant believes that amended claim 1 is not taught by the references cited by the Examiner and is now in condition for allowance. As such, dependent claims 2-11, which depend from independent claim 1, are also in condition for allowance.

With respect to independent claim 24, Applicant respectfully disagrees with both the Examiner's §§ 102 and 103 rejections. Particularly, with respect to the § 102(b) rejection, Eisenbraun does not anticipate a piece of porous material that includes a bottom surface is "operative to receive a fragrance producing composition". As

explained above, porous material 30 is contained in insert 28, which appears to be a solid piece that abuts the sides and bottom surface of porous material 30. Based upon Figure 3, and the corresponding description, it appears that neither the sides or bottom surface of porous material 30 are operative to receive the fragrance producing composition.

With respect to the Examiner's § 103(a) rejection of claim 24, Applicant submits that the combination of Stults and Eisenbraun would not teach all of the claim limitations of independent claim 24. Accordingly, a prima facie case of obviousness under 35 U.S.C. § 103 has not been established. Specifically, Eisenbraun teaches stanchions, which may be in the form that appears in Figure 1, or in the form of support rib 50. In either form, the stanchion is operative "to maintain a predetermined distance between the cover 32 and rigid housing 12." (Col. 2, lines 50-52). In other words, the Eisenbraun stanchions are not operative to support the porous material 30. Accordingly, one of ordinary skill in the art would not be motivated by Eisenbraun to introduce stanchions to the Stults pendant that would support the porous body 50 in spaced relation to the securement member. If anything, Stults would be modified to include stanchions to elevate lid 16, not porous material 50, which would inevitably lead to an undesirable result since porous body 50 is not affixed to the setting. Based on the foregoing reasoning, Applicant believes that claim 24, and its dependent claims 25-30 are in condition for allowance

Due to this Amendment, a new filing fee calculation is provided, as follows:


Maximum Total Claims This Amendment		Total Claims Previously Paid For		
31	-	37	= 0 x \$9.00 =	\$0.00
Total Independent Claims Per This Amendment		Maximum Independent Claims Previously Paid For		
4	-	3	= 1 x \$42.00 =	\$42.00
Additional Filing Fee Due				\$42.00

Accordingly, our check no. 17887 in the amount of \$42.00 is provided herewith. The Commissioner is hereby authorized to charge any deficiency in the payment of the required fees or credit any overpayment to Deposit Account No. 13-1940.

Based on the foregoing, Applicant believes that the present application is in complete condition for allowance, and action to that end is courteously solicited. If any issues remain to be resolved prior to the granting of this application, the Examiner is requested to contact the undersigned attorney for the Applicant at the telephone number listed below.

Respectfully submitted,

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CERTIFICATE OF MAILING UNDER 37 C.F.R. 1.8

I hereby certify that the foregoing ***Amendment (15 pages) and Check No. 17887 in the amount of \$42.00*** is being deposited with the United States Postal Service as first-class mail in an envelope addressed to Mail Stop Fee Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 6th day of May, 2003.

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